REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 5-8 and 10-13 are presently active in this case, Claims 5, 7, 10, and 12 having been amended by way of the present Amendment.

Claims 5, 6, 10, and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons (U.S. Patent No. 5,788,076). Claims 7, 8, 12, and 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Doyle (U.K. 2,240,205). For the reasons discussed below, the Applicants request the withdrawal of the obviousness rejections.

The Official Action acknowledges that the Simmons reference does not teach the code recited in the claims. The Official Action indicates that this is the sole distinction over the Simmons reference. The Official Action then asserts that "where the sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may no be allowed," citing the *Ex parte Gwinn* decision for such an assertion. However, the Applicants note that the data code recited in the pending claims is not merely printed matter of the type discussed in the *Ex parte Gwinn* case. The claims of the present application recite computer-related inventions, which are to be analyzed in the manner discussed in MPEP 2106. Each of the pending claims recites computer-readable material, and therefore must be analyzed using these guidelines.

The pending claims recite the present invention as a computer-readable material including data code for directing a computer to perform various steps. As noted in MPEP 2106 IV.B.1.(a)., "[d]ata structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer." This analysis is much the same as in the printed matter analysis raised in the Official Action. However, MPEP 2106 IV.B.1. states that "[w]hen functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and permits the function of the descriptive material to be realized." MPEP 2106 IV.B.1.(a). further states that "a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory." Accordingly, the claims of the present application recite statutory subject matter, since the computer-readable material includes data code that defines structural and functional interrelationships between the data code and the computer to perform the various functions set forth in the claims. Thus, the claims of the present application recite statutory computer-related subject matter that defines statutory functional descriptive material.

MPEP 2106 VI. then describes the analysis of such computer-related claims. MPEP 2106 VI. states that "[i]f the difference between the prior art and the claimed invention is limited to descriptive material stored on or employed by a machine," (as is argued in the Official Action) "Office personnel must determine whether the descriptive material is functional descriptive material or nonfunctional descriptive material, as described *supra* in

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paragraphs IV.B.1(a) and IV.B.1(b)." As noted above, the claims of the present application

include subject matter that is functional descriptive material, since the computer-readable

material includes data code that defines structural and functional interrelationships between

the data code and the computer to perform the various functions set forth in the claims. For

example, Claim 5 of the present application advantageously recites a computer-readable

material expressing manufacturing/handling instructing data code, where the data code

directs a computer to perform the steps of instructing the manufacturing of the fluid

component with predetermined composition according to its type or classification in the fluid

component packaged goods, and instructing the handling of the fluid component packaged

goods differently according to its type or classification, wherein the data code expresses data

for instructing manufacturing and handling operations to be automated to be able to directly

instruct processing and handling operations in a processing or handling section. Such a

recitation clearly provides the structural and functional interrelationships between the data

code and the computer to perform the various functions set forth in the claims. A similar

analysis can be performs for Claims 7, 10, and 12 of the present application.

MPEP 2106 VI. then states that "[f]unctional descriptive material is a limitation in the

claim and must be considered and addressed in assessing patentability under 35 U.S.C. 103.

Thus, a rejection of the claim as a whole under 35 U.S.C. 103 is inappropriate unless the

functional descriptive material would have been suggested by the prior art." (Citing *In re*

Dembiczak, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). While

nonfunctional descriptive material (e.g., music or literary work) can be overlooked when

determining obviousness, functional descriptive material cannot be overlooked. The Official

Action expressly acknowledges that the Simmons reference does not teach the code or the functions defined in the code, as recited in the pending claims, and therefore these claims are not obvious in view of the Simmons reference. The limitations set forth as functional descriptive material cannot simply be ignored for purposes of determining the differences between the invention and the prior art, but rather must be given patentable weight.

The pending Claims 5 and 7 recite a computer-readable material expressing manufacturing/handling instructing data code, where the data code directs a computer to perform the steps of instructing the manufacturing of the product with predetermined composition according to its type or classification in the goods, and instructing the handling of the goods differently according to its type or classification, wherein the data code expresses data for instructing manufacturing and handling operations to be automated to be able to directly instruct processing and handling operations in a processing or handling section. Claims 10 and 12 recite a computer-readable material expressing manufacturing/handling instructing data code, wherein the data code directs a computer to perform the step of instructing manufacturing and handling operations to be automated to be able to directly instruct processing and handling operations in a processing or handling section, wherein the manufacturing instruction is adapted to be utilized to manufacture the product with predetermined composition according to its type or classification in the goods and the handling instruction is adapted to be utilized in handling the goods differently according to its type or classification. The Simmons reference does not disclose such features.

The Simmons reference describes a package including a container having regular information on an outer surface thereof and a wrapper extending at least partially over the

container surface and bearing information of which at least some is substantially identical to at least some of the regular information on the outer container surface. The Simmons reference describes the use of such information during promotional sales of product-filled containers. The Simmons reference does not disclose or suggest data code that is configured so as to contain the data for instructing manufacturing and handling operations in a processing or handling section according to the type of classification of the product.

Accordingly, the Applicants respectfully submit that the pending independent claims are allowable over the prior art. The dependent claims are considered allowable for the reasons submitted for the independent claims from which they depend. Accordingly, the Applicants respectfully request the withdrawal of all of the obviousness rejections.

Consequently, in view of the above discussion, it is respectfully submitted that the present application is in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
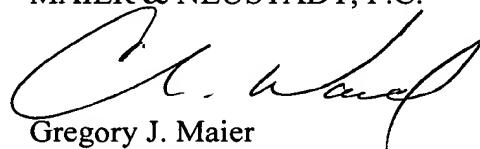
Gregory J. Maier
Registration No. 25,599
Attorney of Record

Christopher D. Ward
Registration No. 41,367

Customer Number

22850

Tel. (703) 413-3000
Fax. (703) 413-2220
(OSMMN 10/01)

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